

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL ASSOCIATION OF FIRE)	
FIGHTERS, LOCAL 2709)	
)	
Petitioner,)	
)	
v.)	Public Case No. 80-006
)	
LIBERTY FIRE DEPARTMENT OF)	
LIBERTY, MISSOURI)	
)	
Respondent.)	

**FINDINGS OF FACT,
CONCLUSION OF LAW, AND DECISION**

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon International Association of Fire Fighters, Local 2709, filing a petition for certification as public employee representative of all employees of the Liberty Fire Department including but not limited to the position of captain, but excluding the fire chief, deputy fire chief and assistant fire chief. The City contends that the captains should be excluded from the bargaining unit because of their supervisory duties. On May 6 and 7, 1980, a hearing was held in Independence, Missouri, at which representatives of Local 2709 and the City were present. Upon agreement by the parties, the case was heard by Chairman Conrad Berry who submitted the case by transcript to one employer member and one employee member of the Board. The State Board of Mediation is authorized to hear and decide issues as to the appropriate bargaining unit by virtue of Section 105.525, RSMo 1978.

At the hearing the parties were given full opportunity to present evidence. The Board, after careful review of the evidence, sets forth the following findings of fact and conclusions of law:

FINDINGS OF FACT

The Liberty Fire Department employs twenty-six persons, consisting of a fire chief, a deputy fire chief, an assistant fire chief, five captains and eighteen fire fighters. The department has three separate stations: Station No. 1, the primary station where all three shifts work, and stations No. 2 and 3, which are usually manned by one fire fighter. The department operates on three shifts, designated A, B and C. Each shift is twenty-four hours in duration, beginning and ending at 7:00 a.m. Completion of a twenty-four hour shift is followed by forty-eight hours off. There is one shift captain and four to six fire fighters working on each shift. The activities of the fire department employees may be divided into fire fighting and administrative duties.

Fire Fighting: The shift captain, who resides with the fire fighters during his shift, is responsible for answering emergency calls and dispatching men and equipment to the fire scene. The driver of the fire engine, if the first to arrive at the fire scene, is initially in command. The shift captain assumes command upon arrival. At all fires one captain is present directing the fire fighting team. The captain not only has the authority to make tactical decisions but also may call in additional equipment if needed. The majority of the captain's time at the fire scene is spent directing the fire fighters as opposed to actually fighting the fire. The commanding captain is responsible for the entire operation unless he is relieved by a chief. The record establishes that a captain has never been relieved of his command responsibility at a fire scene. Although a chief may be present and may give instructions to fire fighters, the captain retains overall command at the fire scene.

Administrative Duties: The Liberty Fire Department not only provides fire fighting and fire prevention services for the community but also provides emergency medical services and is responsible for the city's civil defense. To provide these services each

fire fighter must be qualified as an emergency medical technician or paramedic. All employees are cross-trained in medical services and fire fighting techniques. These additional responsibilities of the fire department result in increased administrative duties and paper work, the bulk of which have been delegated to the five captains.

The administrative duties of Captain Griffey, the shift captain of shift A, include the preparation of the annual fire department budget and purchasing for the department. He receives budget requests from the other captains and compiles them into the budget for the entire department. Captain Griffey exercises discretion in preparing the budget, and has the authority to veto budget proposals. with respect to purchasing, Captain Griffey insures that the department has sufficient supplies on hand including items that must be purchased on a regular basis as well as capital items. He has authority to purchase without prior approval items costing less than two hundred dollars. Captain Griffey must receive bids from prospective suppliers for any items costing over two hundred dollars. Griffey also has the authority to withhold payments of bills and has on occasion exercised that authority.

Captain Weber, shift captain of shift B, oversees the ambulance service or EMS (emergency medical services). He is responsible for seeing that personnel meet state licensing guidelines, and that the department has sufficient insurance to protect against claims resulting from the employee's performance of their duties. Captain Weber is also responsible for maintaining the ambulances. Additionally, he prepares the budget for the EMS.

Captain Hobbs, shift captain of shift C, oversees the maintenance communications equipment, including the radio communications system and the civil defense equipment. Captain Hobbs also purchases communications equipment and

prepares the budget with respect to that equipment. Captain Hobbs budgetary decisions have never been altered by a superior officer.

Captain Brooksher, the relief shift captain, is in charge of both the EMS training and civil defense programs. He decides what classes fire fighters must attend in order to maintain their state licenses. Brooksher must keep abreast of requirement changes made by the state and provide training accordingly. With respect to training, Captain Brooksher prepares class outlines, arranges the classes, authorizes overtime for fire fighters to attend the classes and prepares the budget for all training expenses. Also, Brooksher is responsible for the testing of those who attend the classes, and, along with Captain Weber, determines whether employees have successfully completed the courses. Although fire fighters in the department also act as instructors to other fire fighters, only Captain Brooksher can issue certificates of completion.

Captain Myron Schmitt, the fire prevention officer of the department, is responsible for inspecting all commercial buildings, churches and schools for fire hazards. His position is similar to that of a fire marshall in other jurisdictions. He also works closely with the city building inspector to review all building plans to insure compliance with the uniform fire code standards. Captain Schmitt also gives presentations to hospitals, nursing homes and schools on fire prevention methods.

The shift captains have many other duties that distinguish them from the rank and file fire fighters. The captains are a part of the management staff, composed of all chiefs and captains. The management staff meets each Monday morning to discuss department activities and personnel problems. Fire fighters are excluded from these meetings.

As a part of the management staff, the captains participate in the department's hiring process. In the first step of the hiring procedure the management staff screens

job applicants. The captains have the authority to reject applicants at this stage. The management staff then interviews the remaining applicants, each being graded by the members of the management staff. Those applicants receiving superior grades are interviewed a second time. The captains again participate in the applicant's interview. Following the second interview, the fire management staff makes a recommendation to the chief who submits the recommendation to city administrators for final approval. In most cases the chief's recommendation is consistent with the decision made by the staff.

The captains also play an active role in the promotion of fire fighters. The captains, along with the chiefs, evaluate the fire fighter's performance on a semi-annual basis. The chief relies on the evaluations in determining whether a fire fighter should be given a pay increase. Poor performance evaluations may result in suspension or dismissal. In addition to the performance evaluations, the captains recommend whether newly hired fire fighters should be taken off probationary status.

Captains play a more limited role in the disciplinary procedures of the department. Although they can issue both oral and written reprimands, it appears that no severe disciplinary measure will be taken without an independent investigation being made by a superior officer. Evidence established that one fire fighter was placed on probation upon recommendation of a captain.

Although the ultimate authority to discharge an employee rests with the city administrator, the captains have the authority to recommend that an employee be discharged. Testimony established that on at least three occasions the chief did not follow recommendations of captains concerning the discharge of employees.

Unlike the chiefs, the shift captains reside at the station with the fire fighters during their shift. The shift captains eat with and spend their study time with the fire

fighters, and often participate in cleaning details, although they are not required to do so. The captain is responsible for the overall functioning of the shift, directing the employees, establishing work priorities and overseeing work details. Although there is a standard daily schedule, shift captains have the authority to deviate from scheduled activities and often do so.

The City of Liberty has a twenty-four range pay schedule. There is a 5% pay differential between each range. The employee positions and pay range are as follows: deputy fire chief, range twenty-three; assistant fire chief, range twenty-one; captains, range nineteen; fire fighter/paramedics; range seventeen; fire fighter/EMT's, range fifteen.

CONCLUSIONS OF LAW

Local 2709 has petitioned to be certified as public employee representative of a bargaining unit comprised of all Liberty fire department employees, including but not limited to position of captain, but excluding the fire chief, deputy fire chief, and assistant fire chief. The City contends that the captains are supervisory employees and therefore should be excluded from the bargaining unit. The issue before the Board, therefore, is whether the captains should be included in the appropriate bargaining unit. An appropriate unit is defined by Section 105.500(1) RSMo 1978, as:

"a unit of employees at any plan or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned."

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest." However, the Board has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. St. Louis Fire Fighters Association, Local 73, IAFF, AFL-CIO vs. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976). Amalgamated Transit

Union vs. Bi-State Development Agency, Case No. 78-004 (SBM 1978). Therefore, to determine the appropriate bargaining unit we must determine whether the captains are in fact supervisors. The Board recently reiterated the factors considered in determining whether an employee is a supervisor in St. Charles Professional Fire Fighters, Local 1921, IAFF, vs. City of St. Charles, Case No. 79-024 (SBM 1979). Those factors are:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.

Petitioner contends that based upon the above factors, the Liberty fire department captains are not supervisors. In short, petitioner asserts that although the captains are in charge of certain activities and have the authority to direct fire fighters, the captains do not exercise independent judgment sufficient to be considered supervisors. Further, petitioner argues that the captain's responsibility is not substantial enough for the captains to be deemed supervisors. For the reasons set out below the Board rejects the petitioner's arguments.

First, the number of employees supervised by the captains and the lack of employees with similar or greater authority demonstrates the captain's supervisory status. The record shows that at the fire house the captains are in charge of all fire fighters on his shift. The captain is the highest ranking member of the department

residing at the fire house. He is primarily responsible for seeing that department policies and procedures are followed. No other department employee exercises greater authority in this respect. At the fire scene, the captain also exercises more authority than any other employee. A captain has never been relieved of his command authority at the fire scene. Also, because volunteers often respond to alarms, the captains must sometimes supervise as many as twenty persons.

Second, the captains spend a substantial majority of their time supervising employees rather than acting as a working supervisor. The captains are not required to do housekeeping chores as are the fire fighters. Rather, the captains are responsible only for seeing that the work details are satisfactorily completed. Similarly, the majority of the captain's time at the fire scene is spent supervising the fire fighters activities rather than working alongside the fire fighters indicating that the captains are not working supervisors but are instead true supervisors.

Third, it is clear that the captains have significant input in the hiring of new employees. The captains are a part of the management staff that screens applicants, conducts interviews, and makes recommendations to the fire chief. In view of the captain's extensive involvement in the hiring process, the Board must conclude that the captains can effectively recommend the hiring of new employees, thus indicating supervisory status.

Fourth, the captains effectively recommend the promotion of employees in that the evaluations in which captains grade the fire fighters are used by the chief in determining pay increases. Also, a probationary employee will be promoted to regular status only after a consensus of captains have made a favorable recommendation.

Finally, and most important in supporting the Board's decision, is the amount of independent judgment the five captains exercise in directing and assigning the work force and carrying out their various responsibilities. Petitioner contends that the decisions made at the fire scene are routine in nature, based on the captain's fire

fighting expertise rather than his supervisory expertise. In supporting this argument petitioner cites St. Charles Professional Fire Fighters Local 1921 vs. City of St. Charles, Case 79-024 (SBM 1979), in which the Board held that the St. Charles fire department captain's authority at the fire scene was that of a leadsman rather than that of a supervisor. The St. Charles decision is readily distinguishable from the present case in that the St. Charles captains remained in charge of the fire fighters only until the assistant chief arrived. In effect, the St. Charles captain's authority was only temporary. In contrast, the captains of the Liberty fire department maintain command of the fire fighters until expressly relieved by a chief. A Liberty fire department captain has never been relieved of his command. Thus, it is clear the captains of Liberty fire department exercise far greater authority than their counterparts of St. Charles.

Further indicating the captain's supervisory status is the amount of independent judgment exercised by each captain in carrying out their administrative duties. Captain Griffey has considerable authority concerning the department budget and procuring malpractice insurance, he also determines the budget concerning the communications equipment. Similarly, Captain Brooksher has complete control in all training matters. In short, the captain's extensive administrative responsibilities, their considerable input in the hiring process, and their command responsibilities strongly indicate the supervisory status of the captains.

In view of the above considerations, the Board concludes that the captains are supervisors to be excluded from the appropriate bargaining unit.

DECISION

Pursuant to Section 105.525 RSMo 1978, the State Board of Mediation finds the following unit to be appropriate:

"All fire fighter/EMT's and fire fighter/paramedics, but excluding captains, assistant chief, deputy chief and chief."

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than forty-five (45) days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period, because they were ill or on vacation. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by Local 2709, International Association of Fire Fighters.

It is hereby ordered that the respondent shall submit to the Chairman of the State Board of Mediation, as well as to the petitioner, within seven days from the date of receipt of this decision, and alphabetical list of the employees in the unit determined above to appropriate who were employed during the designated payroll period.

Signed this 22nd day of October, 1980.

(S E A L)

STATE BOARD OF MEDIATION

/s/ Conrad L. Berry
Conrad L. Berry, Chairman

/s/ Robert Missey
Robert Missey, Employee Member

/s/ Herbert Shaw
Herbert Shaw, Employer Member